

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 215 Emergency Management

SPONSOR(S): Abruzzo

TIED BILLS: None **IDEN./SIM. BILLS:** SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier	Bond
2) Community & Military Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent. Current law empowers the State Health Officer to declare a public health emergency.

This bill provides immunity from civil damages for persons who, in good faith, provide temporary housing, food, water, or electricity to emergency first responders or their family members during the 6 months following a declared emergency or public health emergency. Persons are provided immunity only if they acted as an ordinary reasonably prudent person would have acted under the same or similar circumstances. The bill further provides a higher level of immunity from civil damages for entities that register with a county emergency management agency as a housing provider for emergency first responders and that, in good faith, provide housing, food, water, or electricity for emergency first responders. Such entities are immune from civil damages unless the damages result from circumstances demonstrating a reckless disregard for the consequences of another.

This bill may have a minimal fiscal impact on counties. This bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Declarations of Emergency

Section 252.36(2), F.S., empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent. Section 381.00315, F.S., deals with the state's response to public health emergencies and empowers the State Health Officer to declare public health emergencies.¹ States of emergency and public health emergencies may only last for 60 days unless renewed by the Governor.² States of emergency are sometimes declared due to weather, such as hurricanes, and one was declared last year in response to the Deepwater Horizon incident.

Negligence

"Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances."³ A person injured by another's negligence may recover damages against the negligent party if the negligence was the legal cause of the injury.⁴ Negligence actions are governed by common law and by ch. 768, F.S.

Florida law contains immunity provisions that may limit civil liability of persons if they act in a specified manner. For example, s. 768.1315, F.S., provides that a state agency or subdivision which donates fire control or fire rescue equipment to a volunteer fire department is not liable for civil damages caused after the donation by a defect in the equipment.

Florida law also contains provisions that provide immunity from negligence but not from reckless behavior. For example, Florida's Good Samaritan Act provides that certain health care providers performing certain emergency services are not liable for civil damages unless the damages result from providing or failing to provide care under circumstances that demonstrate "a reckless disregard" for the consequences.⁵ Reckless disregard is "such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which was necessary to make the conduct negligent."⁶

Effect of the Bill

This bill creates the "Postdisaster Relief Assistance Act." The bill provides that any "individual, corporation, or other business entity"⁷ ("Person") who in good faith provides temporary housing, food,

¹ Section 381.00315(1)(b), F.S., provides in part: "Public health emergency" means any occurrence, or threat thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.

² See ss. 252.36(2) and 381.00315, F.S.

³ See Florida Standard Jury Instructions in Civil Cases, 401.4 at

http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

⁴ See Florida Standard Jury Instructions in Civil Cases, 401.12, 401.18 at

http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

⁵ s. 768.13(1)(b)1., F.S.

⁶ s. 768.13(1)(b)3., F.S.

⁷ The bill defines "individual, corporation, or other business entity" as physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, dentists, advanced registered nurse practitioners, physician assistants, workers employed by a public or private hospital, paramedics, emergency medical technicians, firefighters, members of the Florida National Guard, and other personnel designated by the Governor as emergency personnel.

water, or electricity to emergency first responders⁸ or the immediate family members⁹ of emergency first responders during a period of 6 months following the declaration of an emergency may not be held liable for any civil damages as a result of providing the temporary housing, food, water, or electricity where the Person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances. The temporary housing, food, water, or electricity must be provided in direct response to an emergency situation related to or arising out of a state of emergency declared pursuant to ss. 252.36 or 381.00315, F.S.

The bill provides increased protection from liability for certain entities. The bill provides that any "entity, employee thereof, or any individual that annually registers prior to a declared emergency with a county emergency management agency¹⁰ as a housing provider for emergency first responders" and who, in good faith, provides housing, food, water, or electricity for emergency first responders or the immediate family members of emergency first responders may not be held liable for any civil damages as a result of providing or failing to provide such housing, food, water, or electricity unless such damages result from providing or failing to provide such housing, food, water, or electricity under circumstances demonstrating a reckless disregard for the consequences of another. In order to qualify for the immunity, the provision of such housing, food, water, or electricity must be necessitated by a sudden or unexpected post-emergency situation or occurrence arising as a result of a declared emergency.

Therefore, an entity that provides temporary housing, food, water, or electricity to emergency first responders is not liable for civil damages as a result of providing such housing, food, water or electricity is the entity acts as an ordinary reasonably prudent person. An entity that provides such goods and services to emergency first responders and registers in advance with a county emergency management may not be held civilly liable unless the entity is reckless.

The immunity provided to individuals, entities, and employees that annually register with the county emergency management agency does not apply to damages as a result of any act or omission:

- That occurs more than 6 months after the declaration of an emergency by the Governor, unless the declared state of emergency is extended by the Governor, in which case the immunity continues to apply for the duration of the extension; or
- That is unrelated to the original declared emergency or any extension.

The bill defines "reckless disregard" as "conduct that a reasonable person knew or should have known, at the time such services were provided, would be likely to result in injury so as to affect the life or health of another, taking into account the extent or serious nature of the prevailing circumstances."

B. SECTION DIRECTORY:

Section 1 creates s. 252.515, F.S., relating to the "Postdisaster Relief Assistance Act" and immunity from civil liability.

Section 2 provides that the bill is effective July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁸ "Emergency first responders" and "first responders" are not defined by the bill.

⁹ The bill defines immediate family member as a parent, spouse, child, or sibling.

¹⁰ County emergency management agencies are created by s. 252.38, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill requires entities seeking the civil damages immunity to register annually with the county emergency management agency. Counties may incur minimal expenditures related to such registration.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrases “emergency first responders” or “first responders” are not defined by the bill. “First responders” is defined in ss. 112.1815, 125.01045, and 166.0446, F.S. “Emergency first responder” is used in s. 286.29, F.S., but is not defined.

It is not clear whether providing immunity where an entity or person acts as “ordinary reasonably prudent person would have acted under the same or similar circumstances” has any effect. In *Campbell v. Kessler*, 848 So. 2d 369, 371 (Fla. 4th DCA 2003), the court explained a statute that purports to provide liability protection to those that act in good faith and as reasonably prudent persons, language similar to the language contained in this bill,¹¹ does not provide protection:

The statute clearly and articulately provides that volunteers are protected if they are carrying out volunteer duties in good faith and as reasonably prudent persons.

¹¹ The Good Samaritan Act, s. 768.13, F.S., provides liability to protection to volunteers. This bill’s protections are not limited to volunteers.

The same language in the Good Samaritan Act, §768.13(2)(a), has been recognized as offering no protection to a negligent party... [The defendant] would not be protected from his own negligence under the straightforward language of the statute.¹²

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

¹² See, also, *Botte v. Pomeroy*, 438 So. 2d 544 (Fla. 4th DCA 1983)(“As if the foregoing were not enough, there is another portion of the statute that completes its emasculation, because the good samaritan is required to render his assistance like an “ordinary reasonably prudent man.” Obviously, any sensible plaintiff’s lawyer can plead around a statute such as this and get to the jury. As it now stands, it does not appear to be a very good idea to render assistance to an accident victim.”); *L.A. Fitness International, LLC v. Mayer*, 980 So. 2d 550, 561 n. 2 (Fla. 4th DCA 2008)(“The immunity given under the Act to a person who gratuitously renders aid to an injured person is conditioned upon that person rendering aid “as an ordinary reasonably prudent person.” Because this is no different than the common law standard of care that applies without this so-called immunity, the protection under the act is illusory”).